

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 16.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–15, attempting to first address the items in which short argument is anticipated.

February 21, 2018, at 10:00 a.m.

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1. [17-24205-E-13](#) MARK BRADY MOTION TO DISMISS CASE
DPC-1 Dale Orthner 1-22-18 [[45](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 22, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Mark Brady (“Debtor”) is \$7,275.00 delinquent in plan payments, which represents multiple months of the \$2,425.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on February 12, 2018. Dckt. 52. Debtor promises to file a modified plan before the hearing date. Debtor filed the document on non-pleading paper without the help of his attorney. Debtor alleges he has had difficulty communicating with his attorney.

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

2. [17-28207-E-13](#) SHANNON CLARKE
Michael Benavides

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-23-18 [18]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 25, 2018. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on January 18, 2018.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

3. [17-26624-E-13](#) **CHARLES JACKSON,**
DPC-1 **PAMELA JACKSON**
 Paul Bains

MOTION TO DISMISS CASE
1-22-18 [19]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 22, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Charles Jackson Jr. and Pamela Jackson (“Debtor”) are \$6,540.00 delinquent in plan payments, which represents one month of the \$6,540.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

4. [17-27629-E-13](#) **MEIKO HILL**
 Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
1-25-18 [26]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on January 27, 2018. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$76.00 due on January 22, 2018.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$76.00.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 24, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) argues that Meiko Hill (“Debtor”) did not commence making plan payments and is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee reports that Debtor failed to disclose on the petition the following nine prior bankruptcy cases:

- A. Case No. 02-25474
- B. Case No. 02-28692
- C. Case No. 13-28274
- D. Case No. 13-34888
- E. Case No. 14-28169

- F. Case No. 14-29538
- G. Case No. 17-24459
- H. Case No. 17-23538
- I. Case No. 17-25291

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition, p. 3, Dckt. 1. Debtor reported filing, but did not report any case numbers, dates, or districts. Debtor’s “pattern of filing and dismissal . . . combined with the [Debtor’s] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was intended. The [Debtor’s] creditors have been wrongly hindered or delayed from enforcing their rights.” *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at *8 (Bankr. E.D. Cal. Jan. 28, 2011) (dismissing Debtor’s bankruptcy case with prejudice because of undisclosed serial filings and barring Debtor from filing another bankruptcy petition within two years).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

6. [17-27931-E-13](#) CHARLENE LINDAUER
DPC-1 MACALUSO
Pro Se

MOTION TO DISMISS CASE
1-22-18 [\[24\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 22, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) alleges that Charlene Macaluso (“Debtor”) did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee asserts that Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and

E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

CHAPTER 13 TRUSTEE'S STATUS UPDATE

The Chapter 13 Trustee filed a Status Update on February 13, 2018. Dckt. 30. He reports that the grounds remain unaddressed, and now, Debtor is \$363.33 delinquent on plan payments.

RULING

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 12, 2018. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) argues that Randy Kemp (“Debtor”) did not commence making plan payments and is \$2,013.00 delinquent in plan payments, which represents one month of the \$2,013.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee alleges that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

8. [14-24643](#)-E-13 LAQUETA MARTIN MOTION TO DISMISS CASE
DPC-11 Susan Dodds 1-19-18 [[148](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 19, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that LaQueta Martin (“Debtor”) is \$304.00 delinquent in plan payments, which represents multiple months of the \$152.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S REPLY

Debtor filed a Reply on January 24, 2018. Dckt. 152. Debtor promises to cure the delinquency before the hearing date. The Reply, merely argued by Debtor’s counsel (there being no evidence submitted), is that somehow Debtor will come up with multiple months of Debtor’s projected disposable income in one month to cure the defaults and fund the current month’s payment.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

9. [17-25354-E-13](#) **PETER/ALISON BIPPART** **MOTION TO DISMISS CASE**
DPC-3 **Eric Schwab** **1-11-18 [37]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 11, 2018. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee asserts that Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Two years of tax returns, and
- B. Six months of bank account statements,

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on February 6, 2018. Dckt. 41. Debtor promises to file an amended plan and a motion to incur debt before the hearing date.

RULING

Unfortunately for Debtor, a promise to file additional pleadings is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 22, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee alleges that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

11. [16-25884-E-13](#)
DPC-1

GLORIA RANNALS
Scott Hughes

MOTION TO DISMISS CASE
1-19-18 [55]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Gloria Rannals ("Debtor") is \$290.00 delinquent in plan payments, which represents one month of the \$290.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 7, 2018. Dckt. 59. Debtor promises to cure the delinquency before the hearing date.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

12. [17-25486-E-13](#) **CHERYL HANSEN** **MOTION TO DISMISS CASE**
DPC-2 **Scott Shumaker** **1-24-18 [88]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 24, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Cheryl Hansen (“Debtor”) is delinquent in plan payments, whether measured under the original plan or by the approved trial loan modification. Under the Plan, he asserts that Debtor is \$9,210.00 delinquent, and under the trial loan modification, he states that Debtor is \$7,842.06 delinquent. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on November 7, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S RESPONSE

Debtor filed a Response on February 1, 2018. Dckt. 95. Debtor promises to file an amended plan before the hearing date because her supplemental income has decreased. She states that her boyfriend was providing approximately \$1,000.00 per month, but they are no longer dating, and he stopped providing funds.

RULING

Unfortunately for Debtor, a promise to file an amended plan is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

13.	17-25403-E-13 DPC-2	BYLLIE DEE Pro Se	CONTINUED MOTION TO DISMISS CASE 10-4-17 [19]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 4, 2017. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) argues that Byllie Dee (“Debtor”) did not commence making plan payments and is \$667.00 delinquent in plan payments, which represents one month of the \$667.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4)

permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

In addition, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has also not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Finally, Debtor has not provided the Chapter 13 Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

NOVEMBER 1, 2017 HEARING

At the hearing, the court noted that Debtor had requested a continuance due to a connection to fires in Santa Rosa. Dckt. 26. The court reviewed Debtor's pleadings and his prior cases, and discussed with him numerous deficiencies that exist in this case. Debtor argued that he wants to be represented by counsel, and to afford Debtor time to obtain counsel, the court continued the hearing to 10:00 a.m. on January 17, 2018. Dckt. 28.

The court noted that there appear to be significant assets (in the form of vehicles) in this case, and the court stated that at the continued hearing the court would consider whether dismissal or conversion was appropriate. Dckt. 26.

JANUARY 17, 2018 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on February 21, 2018, while a motion for relief from the automatic stay asserting grounds under 11 U.S.C. § 362(d)(4) was pending. Dckt. 65.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 13, 2018. Dckt. 78. FN.1. Debtor states that \$2,113.62 was paid on February 12, 2018, to cure the delinquency. He states that he has filed declarations about not having to file tax returns and not having pay advices. He claims that proof of his Social Security Number was provided on February 12, 2018. Finally, he claims that the plan defects have been cured by filing an amended plan.

FN.1. Debtor filed the Opposition, Declaration, and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR.

R. 9004-2(c)(1). Debtor is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

DISCUSSION

Since the January 17, 2018 hearing, Debtor does not appear to have acquired legal counsel for this case. Instead, Debtor continues in attempting to prosecute this case without legal support. The outcome of that decision now may lead to dismissal of this case.

Points of Opposition

Income and Expenses

Debtor’s Opposition begins with that he has made a payment of \$2,113.62 to the Chapter 13 Trustee on February 12, 2018. Opposition, p.2 ¶ 1; Dckt. 78. This represents six payments of \$352.27 each, including the payment for February 2018. Attached as Exhibit A is a copy of a receipt for a cashier’s check dated February 12, 2018, in the amount of \$2,113.62, which is made payable to David Cusick. *Id.* at 4.

On Schedule I, Debtor has provided the court with income information under penalty of perjury. Dckt. 10 at 25–26. On it, he states having gross monthly income of \$4,450.00, which when annualized is \$53,400.00. He has no deductions or withholding for any state or federal taxes.

On Schedule J, Debtor states that he has no dependents. *Id.* at 27–28. For total monthly expenses, Debtor states having (\$3,733.00) in expenses, leaving him with \$717.00 per month in Net Monthly Income. *Id.* at 28. The expenses stated under penalty of perjury on Schedule J are:

- A. Residence Mortgage.....(\$378)
- B. Residence Property Taxes.....(\$115)
- C. Residence Insurance.....(\$106)
- D. Residence Home Maintenance.....(\$0-)

It is not reasonable that a homeowner, or even a tenant, does not have any maintenance expenses, even if putting light bulbs in lamps.

- E. Electricity/Heat/Gas.....(\$250)
- F. Water/Sewer/Garbage.....(\$210)
- G. Phone/Internet/Cable.....(\$107)
- H. Food and Housekeeping Supplies.....(\$400)
- I. Clothing/Laundry/Dry Cleaning.....(\$-0-)
- J. Personal Care Products/Services.....(\$-0-)
- K. Medical/Dental.....(\$ -0-)

It is not reasonable that during a five-year plan Debtor would never buy clothes, clean clothes, get a hair cut, buy deodorant, buy any over the counter medication, or see a dentist or doctor.

- L. Transportation.....(\$350)

For this expense, Debtor reports having two cars, a 2007 Maserati and a 1977 Rolls Royce. A (\$350) per month expense for registration, maintenance, and fuel for these two vehicles is not credible. If the court assumes an annual registration fee of (\$425) for the two vehicles, that averages to (\$36) per month. For maintenance for a Maserati and Rolls Royce, the court will use \$2,400 per year (assuming no major repairs). That averages (\$200) per month. After deducting (\$235) for registration and maintenance, that leaves \$115.00 for fuel. At \$3.55 per gallon (assuming that Debtor drives the Maserati as his everyday vehicle and the Rolls Royce is an investment, rarely driven car), Debtor can purchase thirty-two gallons of gas each month. Assuming that the Maserati gets fifteen miles to the gallon average, that allows Debtor to drive 480 miles per month—or sixteen miles per day in a thirty-day month. That does not appear to be a realistic statement of the vehicle expense.

- M. Entertainment/Recreation.....(\$ -0-)

Again, for the five years of a bankruptcy plan, it does not appear credible that Debtor never has any entertainment or recreation expenses.

- N. Health Insurance.....(\$137)
- O. Vehicle Insurance.....(\$428)

Debtor’s vehicle expense, for one man over the age of twenty-five is \$5,136 per year for his two vehicles. Presumably, that is high given the luxury, high performance character of the two vehicles. Just this one expense alone is one-tenth of all of Debtor’s expenses. This expense, if accurate, and the high percentage of the expenses are not indicative of a credible debtor prosecuting a Chapter 13 Plan.

- P. Taxes (based on \$53,400.00 for a single adult).....(\$ -0-)

The court cannot divine, based on what has been filed under penalty of perjury by Debtor and in opposition to this Motion, how a single adult Debtor in the State of California who earns \$53,400.00 per year pays \$0 in federal income tax, \$0 in state income tax, and \$0 in Social Security, and \$0 in the other miscellaneous taxes and withholdings imposed on workers in California. That is not credible.

- Q. Car Payment for One Vehicle.....(\$757)
- R. Mortgage on Non-Residence.....(\$1,100)
- S. Real Estate Taxes on Non-Residence.....(\$202)
- T. Maintenance on Non-Residence.....(\$ -0-)
- U. HOA Dues on Non-Residence.....(\$ 75)

On Amended Schedule A/B, Dckt. 42 at 3–4, Debtor lists the following real properties in which he has an interest:

- A. 2599 Walnut Ave., Signal Hill, CA.....\$350,000

Debtor is listed as the sole owner.

- B. 128 Terrace Dr., Bastrop, LA.....\$35,000

Debtor lists this as a “SFR Family Inheritance” for which he is the owner of the \$35,000 interest in this property worth \$75,000.

- C. 5600 International Blvd, Oakland, CA.....\$483,900.00

Debtor lists this type of property as “COMM”, with a total value of \$1,613,100.00. There is at least one other person with an interest in this property. It appears that Debtor claims a one-third interest in this property.

Secured Claims

On Schedule D, Debtor lists Seterus, Inc as having a (\$12,271) claim secured by a “Condo.” It is asserted that the “condo” has a value of \$350,000. This appears to be the Signal Hill Property. Dckt. 42 at 13.

Debtor lists Apollo Auto Finance having a (\$1,800) claim secured by an “Automobile” with a value of \$17,000. *Id.* This appears to be the Maserati, which is listed on Schedule A/B as having a value of \$17,000.

Debtor then lists Alameda County Treasurer having a (\$71,053) claim secured by the “COMM” property. *Id.* at 14. This appears to be the 5600 International Blvd, Oakland, CA property. BMD Loan Svc., Inc. is listed as having a (\$58,000) claim secured by the International Blvd Property as well. *Id.*

Finally, Shellpoint Mortgage is listed as having a (\$4,700) claim secured by the “SFR” Property. *Id.* This is the inheritance property in which Debtor lists a one-third interest.

Statement of Financial Affairs

On his Statement of Financial Affairs, Debtor states under penalty of perjury that he had \$6,700 for January–July 2017, and \$10,300 in 2016 income from employment or business. Statement of Financial Affairs Question 4, Dckt. 42 at 16. Debtor provides no income information for 2015.

Then, Debtor states that he had additional income in the same identical amounts from donations in 2017 and 2016. Statement of Financial Affairs Question 5, *Id.* Debtor provides no income information for 2015.

Though not listed on Schedule A/B, on the Statement of Financial Affairs, Question 27, Debtor states that he did business during the period October 24, 1972, through November 30, 2017, as Saints Rest MBC, Inc., located at 1401 57th Avenue in Oakland, California. *Id.* at 25.

Chapter 13 Plan Filed By Debtor

On February 12, 2018, Debtor filed an Amended Plan, a motion to confirm, a notice of hearing, a proof of service, and a declaration. Dckts. 70–73, 76. The Notice of Hearing does not indicate whether the Motion has been filed under Local Bankruptcy Rule 9014-1(f)(1) or (2), and the Proof of Service does not state what parties have been served. Previously, the Chapter 13 Trustee filed a Notice of Confirmation Procedures that informed Debtor of the pleading deficiencies. Dckt. 36.

The proposed Amended Chapter 13 Plan, ¶¶ 1.01 and 1.02, (Dckt. 73) provides for a \$352.27 per month plan payment for sixty months (less than half of what was proposed previously). No claim is listed in Class 1, even though “CHASE” was identified in the last proposed plan.

For the Class 2 Claims, Debtor lists Apollo Auto Finance, with a \$12,000.00 claim to be paid over sixty months with 10% interest. Using the Microsoft Excel Loan Calculator, the court computes this provided-for claim to require a \$254.96 per month payment through the Plan.

For Class 5, priority unsecured claims, Debtor lists “Bob’s Towing” with a \$7,570.00 claim. If paid over the sixty months of the Plan, with no interest, that would require an additional monthly payment of \$126.17.

There are no creditors with secured claims with no defaults that are to be paid directly in Class 4.

No provision is made for the delinquent tax claims or the other claims secured by real property as listed on Schedule D by Debtor.

Additionally, the Motion to Confirm does not state any grounds with particularity (Federal Rule of Bankruptcy Procedure 9013), nor does it reference any of the applicable rules for Chapter 13. In its entirety, the Motion states:

I, Byllie Dee, debtor, hereby petition the Court to confirm debtor's second amended plan that was filed on February 12, 2018.

Debtor is filing this motion in accordance with Local Rule 9014-1, any other applicable Local Rules, and the applicable provisions of 11 U.S.C. §521(i)(3)[.]

Dckt. 70.

The Declaration in support of confirmation provides no testimony, but merely that "I make this declaration in support of the Motion for Confirmation filed by debtor." Dckt. 72.

Other Motions and Proceedings in This Case

On February 15, 2018, this court entered an order authorizing MTGLQ Investors, L.P., and its agents, representative, and successors to exercise its rights to foreclose on the Louisiana Property. Order, Dckt. 81. The relief granted includes prospective relief pursuant to 11 U.S.C. § 362(d)(4). The court's findings of fact and conclusions of law are stated in the Civil Minutes for the hearing on the Motion for relief from the stay. Dckt. 79. The court discusses the plan proposed in this case, as well as Debtor's multiple, non-productive bankruptcy filings in concluding that the grounds for such relief exist.

Motion to Vacate. The same day as the hearing on the above motion for relief from the stay, and prior to the entry of the order granting the relief, Debtor filed a twenty-seven-page Motion to Vacate (combined motion, points and authorities, declaration, exhibits) the order granting relief. Dckt. 80. The Motion itself merely states that the relief should be vacated. In the points and authorities portion of the Motion to Vacate, Debtor asserts:

- A. Debtor did not file an opposition because Shellpoint Mortgage told him that a loan modification would be completed by the February 13, 2018 hearing date.
- B. Debtor was informed that if he made payments on the obligation, then it would cause delay in finalizing the loan modification.

The exhibits include a letter, dated January 30, 2018, acknowledging receipt of a request for a loan modification from Debtor. Exhibit A, Dckt. 80. It states that the required documentation must be provided by March 1, 2018, and then it may take up to thirty days after receipt of all the documents to respond to the request. Exhibit B and C appear to be documentation that Debtor sent the required information, which consisted only of Debtor's January paystub and letter of employment. These documents

are not included as part of the exhibits, but merely the fax cover sheet prepared by Debtor. Debtor includes as exhibits copies of documents from his bankruptcy filings in the Northern District of California.

Debtor did file an opposition to the motion for relief, though he did not bring it to the attention of the court for the February 13, 2018 hearing. Opposition filed on February 12, 2018, Dckt. 74. This Opposition presents an extensive, heavily cited opposition attacking the motion on substantive legal and evidentiary grounds. Unfortunately, Debtor elected to merely file the untimely opposition and not show up to court on February 13, 2018, to oppose the Motion. FN.2.

FN.2. Because Debtor waited until February 12, 2018, to file his extensive legally and factually based opposition, the court could not review it in preparing the rulings. This led to the court posting it the day before as a “final” ruling, unopposed. When posted as a final, the court states “No Appearance Required.” The court does not “remove” the matter from the calendar and state “no appearance permitted.” If Debtor had such an extensive opposition and had, in good faith, somehow believed that he should not file it, it is the court’s experience that such debtors show up in court the day of the hearing in an effort to actively (though belatedly) assert their rights.

On February 12, 2018, Debtor also filed an Objection to the claim of MTGLQ, L.P., Proof of Claim No. 1 filed in December 2, 2017. Objection, Dckt. 75. The Objection asserts: (1) No documentation showing that MTGLQ, L.P. is the holder of the claims; (2) the itemizations are incorrect; (3) no statement of the cure amount is provided; (4) no escrow account statement is attached; (5) there is no writing showing MTGLQ’s interest on the property securing the claim; (6) no documentation showing perfection of the security interest is provided; (7) no assignment or transfer of the claim filed by MTGLQ is filed; and (8) the additional fees and expenses are not reasonable. Each of these are with a specific citation to Federal Rule of Bankruptcy Procedure 3001.

No points and authorities, declarations, or other evidence is filed in support of the Objection.

In looking at the Registry of Claims in this case, Proof of Claim No. 1 was not filed by MTGLQ, L.P., but is a proof of claim filed for American Express Centurion Bank for an unsecured claim in the amount of \$4,448.67.

Proof of Claim 7 was filed for MTGLQ Investors, L.P., by Shellpoint Mortgage Servicing, on December 1, 2017. It appears that the reference to the proof of claim number in the Objection may either have been a typographical or handwriting error. Though the Objection makes it sound as if Proof of Claim No. 7 is devoid of documentation, it is a forty-two-page proof of claim. Proof of Claim No. 7 includes;

- A. Amount of Claim.....(\$72,537.55)
- B. Collateral.....128 Terr Dr. Bastrop, LA
- C. Basis for Perfection.....Mortgage
- D. Amount Necessary to Cure Arrearage.....(\$33,172.62)

- E. Exhibit A.....Accounting of Defaulted Payments, Costs, and Expenses constituting cure amount and as part of total claim.
- F. Mortgage Proof of Claim Attachment, Form 410A. Accounting of defaulted payments, additional charges, and payments.

The accounting states that the defaults in the regular monthly payment of \$258.68 dates back to February 2011. Several payments on the loan are reflected on the account during the six-year period reported.

- G. An Annual Escrow Account Disclosure Statement—Account History, dated August 15, 2017, on Shellpoint Mortgage Servicing letterhead.
- H. A Note dated June 14, 2002, signed by James E. Lawson, Jr. As the borrower.
- I. An Allonge to the Mortgage Note transferring it from First Source Lending, LLC to Chase Manhattan Mortgage Corporation. The Allonge is then endorsed in blank by Chase Manhattan Mortgage Corporation. As provided under the Commercial Code, the endorsement in blank renders the note “bearer paper.” See Cal. Comm. § 3205(b) which states, “(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a ‘blank indorsement.’ When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.”
- J. A mortgage to secure the Note, bearing a Clerk’s Stamp and a file number, that was signed by James E. Lawson, Jr. On the signature page of the mortgage, there is a stamp and signature by a notary, and a certification by the Clerk of Morehouse Parish, Louisiana.
- G. An Assignment of Mortgage, from First Source Lending, LLC to Chase Manhattan Mortgage Corporation. This bears the filing stamp of the Clerk for Morehouse Parish.
- H. An Assignment of Mortgage from Chase Manhattan Mortgage Corporation to Federal National Mortgage Association. This does not bear a filing stamp.
- I. A Notarial Endorsement and Assignment of Note and Mortgage from JPMorgan Chase Bank, N.A., as successor to Chase Manhattan Mortgage Corporation, to MTGLQ Investors, L.P. This bears a Clerk of the Court Stamp for Morehouse Parish and a file number.

While complaining of the sparse information in the MTGLQ Investors, L.P. proof of claim, it appears that the documentation is there, unaddressed by Debtor.

Decision

Debtor purports to have substantial real property, a Rolls Royce, and a Maserati, but has been repeatedly unable to prosecute bankruptcy cases. In this case, he fell six months behind in monthly payments, and then in one month produced the reduced amount, without explanation.

Debtor does not appear to be able to prosecute this case in good faith, despite multiple attempts. While stating to the court that he desired legal representation, no attorney has been substituted into this case as Debtor's counsel. He continues to prosecute this case himself, with numerous deficiencies in his pleadings that prevent him from getting a plan confirmed.

Though having past due property taxes on the Oakland Property, no provision is made to cure the arrearage. Though there is an arrearage on the Louisiana Property, no provision is made to cure the arrearage.

On his Petition, Debtor states that he has also used the name James Larson in the past eight years. When checking the court's files for other cases by Byllie Williams, using his Social Security Number, the search does not disclose any other cases.

On his Petition, Debtor states that he has had three prior cases in the last eight years in the Northern District of California—4:16-bk-42054, 4:15-bk-42180, and 4:15-43169. The court discusses these cases in the Civil Minutes for the prior hearing on the Motion. Dckt. 26. After reviewing those cases and Debtor's conduct in this case, the court stated:

“Though Debtor's efforts in this case appear questionable, the court will afford Debtor the opportunity to obtain the counsel which he said he desires. Because of the apparently high value vehicles which are in, or are purported to have transited through, the Debtor and the various bankruptcy estate, the court will consider whether dismissal or conversion is the proper relief to be granted pursuant to this Motion if the Debtor fails in the prosecution of this case in good faith.”

Civil Minutes, p. 4, Dckt. 26.

Cause exists to dismiss this case. While Debtor has enjoyed the benefits of bankruptcy in multiple cases, in multiple districts, he has shown he cannot prosecute a case as required under the Bankruptcy Code. Though preparing an extensive legal and factual opposition (due to its length and detail, it could not have been prepared after Debtor learned of the tentative ruling posted the day before the February 13, 2018 hearing on the motion for relief), Debtor waited to file it until the day before the hearing, and then have in hand an extensive motion to vacate, with a legal points and authorities that would rival many attorneys. This appears to be a lying-in-wait strategy intended to delay prosecution of the case and deflect any judicial determination of the parties rights.

The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is granted, and the case is dismissed.

14. [16-25610-E-13](#) **PAUL FERNANDES** **CONTINUED MOTION TO DISMISS**
DPC-3 **Kristy Hernandez** **CASE**
12-19-17 [129]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 19, 2017. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Paul Fernandes (“Debtor”) is \$16,760.79 delinquent in plan payments, which represents multiple months of the \$5,643.93 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S REPLY

Debtor filed a Reply on January 3, 2018. Dckt. 133. Debtor promises to cure the delinquency or file a modified plan, instead, before the hearing date.

JANUARY 17, 2018 HEARING

At the hearing, the Chapter 13 Trustee reported that Debtor made a \$20,000.00 cure payment. Dckt. 135. Debtor's counsel argued that Debtor had held back plan payment monies, believing he would obtain a loan refinance. No evidence of the source of the \$20,000.00 cure payment was presented.

The Chapter 13 Trustee did not oppose continuing the hearing in light of the facts of this case. The court continued the hearing to 10:00 a.m. on February 21, 2018. Dckt. 136.

DEBTOR'S DECLARATION

Debtor filed a Declaration on February 13, 2018. Dckt. 138. Debtor states that he delivered a cashier's check for \$22,404.72 on January 16, 2018, to become current on all plan payments. He states that the funds came from various accounts.

Debtor's non-filing spouse took \$13,721.94 from her 401(K) plan, and Debtor received a lump sum for vacation/sick pay in the amount of \$9,778.66 at some time after changing employers in October 2017. Those two amounts total \$23,500.60.

SUPPLEMENTAL DECLARATION OF YVETTE SANDERS

Yvette Sanders filed a Supplemental Declaration on behalf of the Chapter 13 Trustee on February 14, 2018. Dckt. 141. Ms. Sanders notes that Debtor's prior explanation about the source of the funds was that they were from withheld funds while Debtor was attempting to refinance his home loan.

As of February 14, 2018, Debtor is delinquent \$5,643.93, having failed to make the plan payment due on January 25, 2018.

RULING

Debtor's explanation now about how he was able to provide more than \$20,000.00 in funds conflicts with what was presented to the court previously, such that the court cannot determine that Debtor's statements are credible.

Debtor testifies that he received an "extra" \$9,778.66 in vacation/sick leave pay from his prior employer. Essentially, Debtor testifies that his income was increased by an extra \$10,000.00. This was in October 2017.

Debtor testifies that his wife was able to withdraw \$13,721.94 from her 401(k) Plan. While Debtor provides his bank statement showing \$13,721.94 being transferred into his bank account, no documentation of the purported 401(k) account is provided.

On Amended Schedule I, Debtor states under penalty of perjury that his nonfiling spouse is not employed, but generates \$500 per month from babysitting. Dckt. 70 at 3-4. No expenses for income taxes or self-employment taxes is shown on Amended Schedule J filed by Debtor. *Id.* at 5-6.

On Schedule A/B, Debtor does list his non-debtor spouse having two 401(k) plans, with a total of approximately \$61,000 in funds. Dckt. 14 at 6. If the source of the funds, the non-debtor spouse liquidated at least 22.5% of her 401(k) plan to help fund the defaults. On top of this, Debtor will have to pay income taxes, and possibly an early withdrawal penalty, for this bailout.

Debtor also states that he has changed employment, but now months later, has not filed a Supplemental Schedule I to accurately state his current income. Debtor also fails to provide an accounting of his actual income, in addition to the \$9,778.66 in extra income in 2017 by changing jobs.

However, what the court has been shown is that Debtor was not able to fund the Plan, without the non-debtor spouse having to liquidate a substantial portion of a 401(k) account and Debtor having extraordinary income in 2017 that was otherwise unreported to the court and creditors.

Debtor has not provided the court, Chapter 13 Trustee, and creditors with his current income information, an accounting of his finances based on the change of employment, and his true finances. It appears that this case exists to afford Debtor the opportunity to cure a \$139,000 arrearage on his home mortgage. Third Amended Chapter 13 Plan, Dckt. 93. Debtor has now defaulted, multiple times further in his plan payments.

The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on November 29, 2017. By the court’s calculation, 84 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Linda VanPelt (“Debtor”) is \$600.00 delinquent in plan payments, which represents one month of the \$600.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee’s Motion argues that Debtor did not file a Motion to Confirm for an Amended Plan that had been filed. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required, specifically for 2016. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee reports that Debtor failed to disclose on the petition the following four prior bankruptcy cases:

- A. Case No. 11-30525
- B. Case No. 14-27048
- C. Case No. 15-20897
- D. Case No. 15-24979

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition. Debtor has since amended the petition to list the four cases. Dckt. 62 at 9.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 63. Debtor promises to file an amended plan before the hearing date and to provide the Chapter 13 Trustee with her 2016 tax return. Debtor also reports that the petition has been amended to address the missing cases.

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on February 8, 2018. Dckt. 96. He states that this Motion to Dismiss has not been resolved by the filing of the Amended Plan. The Chapter 13 Trustee states that he is opposing confirmation and that Debtor does not appear to be making a legitimate attempt to confirm a plan in this case.

RULING

As the Chapter 13 Trustee has noted, Debtor has had four prior recent bankruptcy cases. Three of these were with the assistance of counsel, and only one in *pro se*. In dismissing the most recent prior case (in which Debtor was represented by counsel), the court found:

“The Trustee argues that the Debtor did not commence making plan payments and is \$5,608.00 delinquent in plan payments, which represents multiple months of the \$2,804.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Cause exists to dismiss this case for failure to commence plan payments. The motion is granted and the case is dismissed.”

15-24979; Civil Minutes, Dckt. 44.

In dismissing the case before that, filed in *pro se*, the court's findings include:

“The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is causing unreasonable delay prejudicial to creditors. 11 U.S.C. § 1307(c).

1. Debtor is \$5,292 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$2,646 is due on May 25, 2015. Debtor has paid \$0 into the plan to date.
2. Trustee's objection to confirmation was heard and sustained on April 21, 2015. Debtor has not filed a subsequent amended plan or motion to confirm plan.

On June 9, 2015, Debtor filed her own motion to dismiss the Chapter 13 case. Dckt. 33. The Motion does not state any reason Debtor say wants to dismiss the case. . .

...

Cause exists to dismiss this case. The motion is granted and the case is dismissed.”

15-20897; Civil Minutes, Dckt. 34.

The case before that, 14-27048, the case was dismissed due to Debtor’s failure/inability to confirm a Chapter 13 Plan, notwithstanding the assistance of counsel. 14-27048; Order, Dckt. 35.

Debtor filed her Second Amended Plan on January 10, 2018. Dckt. 69. January 2010 is the seventh month of this Chapter 13 case. For the first five months of this case, Debtor is to fund the Plan with the aggregate sum of \$4,400.00, and then months six through sixty of the Plan fund it with \$2,040 per month. Plan ¶ 2.01, Dckt. 69. For the Class 1 Claim treatment, Debtor will be making a monthly payment of \$517.00 for the \$28,405.77 post-petition arrearage on the Wells Fargo Bank, N.A. secured claim. For the \$256,806.77 pre-petition arrearage, Debtor will make a \$930.00 “adequate protection payment” while diligently prosecuting a loan modification. Plan Additional Provisions ¶¶ 6.05-6.07, *Id.* These Plan Additional Provisions also disclose that the regular contractual monthly payment for this debt is \$5,681.04. These Additional Provisions include the “standard” Ensminger Loan Modification terms.

On Schedule I, Debtor states under penalty of perjury that she is employed in real estate, having been so employed for twenty-one years. Dckt. 27 at 1. Debtor states her gross monthly income is \$6,000, from which there is no withholding for income taxes, Social Security, or other standard employee withholdings. *Id.* In the note at the bottom of Schedule I as to whether Debtor anticipates an increase in income, Debtor states under penalty of perjury that she anticipates her income increasing because:

“Alta Realty Group Ca Change: The Housing Market Is Picking Up Again, After The Crash.”

Id. It appears that in Debtor’s real estate world the real estate “crash” has extended through 2017 and is only starting to improve in August 2017. That is inconsistent with every other case that has been presented to this court over the past four years, during which time the California real estate market has roared back.

On her Schedule J, Debtor states having monthly expenses of \$3,960.00. *Id.* at 1–2. Debtor lists her monthly mortgage expense for her residence as being only \$1,717.00. While listing her forty-five-year old son as a dependent, she states having a monthly food and housekeeping supply expense of only \$350 per month. *Id.* at 1. This is not credible, appearing to be highly unreasonable for two adults.

There is a missing expense that indicates that Debtor’s finances are not as stated. No provision is made for Debtor to pay:

A. Any Federal Income Tax

- B. Any State of California Income Tax
- C. Any Social Security Tax
- D. Any Self-Employment Tax
- E. Any Unemployment Tax

Debtor, with a purported income of \$72,000 a year, fails to provide any basis for being exempt from the state and federal taxes which burden every other working person.

Beginning in January 2018, Debtor is required to pay all of her projected disposable income, to fund the Plan, with Debtor only making an adequate protection payment to Wells Fargo Bank, N.A. If Debtor has to pay \$1.00 of federal or state taxes, by Debtor's own statement of finances, she will default in the Plan payments. It appears that Debtor's state and federal taxes will be well in excess of \$1.00 in light of her having at least \$72,000 per year in gross income.

On February 14, 2018, Debtor and her counsel filed Amended Schedules I and J. Dckt. 99. Debtor increases her income to \$6,170.00 per month. While reducing her income from her real estate business to \$4,560 per month, she now discloses receiving \$1,610.00 per month in Social Security Income. Dckt. 99 at 5. In her business income and expense attachment, she lowers her monthly gross income to \$5,000, and has (\$440) in expenses. *Id.* at 6.

Moving to Amended Schedule J, Debtor lists (\$4,130) in expenses, which includes backing out her \$1,610 in Social Security income. Debtor lists having a \$165.00 per month vehicle insurance expense for a vehicle that she does not own (see Schedule A/B discussion below). She lists having \$140 in transportation expense. She does not indicate what bus, trailer, cab, Uber, Lyft, or other non-vehicle owner expenses Debtor is incurring.

Again, missing from her expenses are any federal or state tax obligations. Debtor shows no basis that she is exempt from state and federal taxes.

Chapter 13 Trustee's Opposition to Motion to Confirm, Dckt. 93. The Chapter 13 Trustee's Opposition includes the lack of Debtor disclosing her personal property assets on Schedule A/B. The Chapter 13 Trustee also notes Debtor excluding any expense for state and federal taxes relating to her \$72,000 per year income.

HSBC Bank, N.A., Trustee for the Wells Fargo Bank, N.A. claim, also filed an opposition. The Opposition restates there being a \$256,806.77 pre-petition arrearage. While HSBC Bank, N.A. chaffs at the adequate protection provisions of the proposed plan (ignoring that it holds the key to such terms by filing a motion for relief from the stay, and such relief not being contingent on the loan modification process being completed), it asserts that Debtor is unable to make the plan payments.

Proofs of Claims. The Wells Fargo Bank, N.A. claim for which there is a \$256,806.77 pre-petition arrearage, is stated to be a claim totaling \$956,617.00. Proof of Claim No. 5. From the Attachments to Proof of Claim No. 5, it appears that the defaults in payments go back to 2009.

The Internal Revenue Service has filed its proof of claim for \$15,901.53 in priority taxes and \$7,053.60 general unsecured claim. Amended Proof of Claim No. 7. The Attachment to Proof of Claim No. 7 discloses that the taxes are for 2013, 2014, and 2016 tax years. Further, the opposition asserts that Debtor has not filed a tax return for 2016. This claim demonstrates that Debtor does have federal and state tax expenses from her income, even at the lower-earning rates in prior years than now stated under penalty of perjury going forward.

Schedules, Assets, and Claims. On Schedule A/B, Debtor lists owning the real property identified as 7824 English Hills Road, Vacaville, California. Debtor states the Property has a value of \$500,000.00.

Debtor then lists the 7824 English Hills Road two more times on the Schedules, one time stating it has a value of \$56,191.68 and then \$0.00. Dckt. 1 at 8–9. For personal property, Debtor states under penalty of perjury that she has:

- A. No Vehicles
- B. No Household Goods and Furnishings
- C. No Electronics, TVs, Computers, Cell Phones, etc.
- D. No Equipment for Sports or Hobby
- E. No Clothes
- F. No Jewelry
- G. No Other or Personal Family Items
- H. No Cash
- I. No Deposit or Checking Accounts
- J. No Stock, Bonds, or Other Investments.

Schedule A/B, Dckt. 1 at 9–13. Debtor goes on to affirmatively state that her non-existent personal property has a value of \$0.00. *Id.* at 13.

Though Debtor is represented by counsel (who substituted into this case), Debtor and her counsel have not amended Schedule A/B.

Decision

What Debtor has shown is that she is not prosecuting this bankruptcy case (and likely her multiple prior cases) in good faith. This is obvious to the court, as should be obvious to creditors, the Chapter 13 Trustee, and Debtor's own attorney.

Debtor's counsel has filed Schedules in which Debtor purports to own no personal property, not even the shirt on her back. This has been filed subject to counsel's certifications under Federal Rule of Bankruptcy Procedure 9011. Debtor's counsel has prepared and filed Schedules I and J that purport to state Debtor's income and expenses. A glaring deficiency, obviously to all, is that Debtor, having income ranging between \$48,000 to \$72,000 per year, defiantly refuses to provide for paying any state or federal income, Social Security, or other taxes for her substantial annual income.

Debtor's counsel has affirmatively prosecuted the case and plan, built around Debtor not having to pay any state or federal taxes. These acts have all been subject to counsel's certifications under Federal Rule of Bankruptcy Procedure 9011.

At hearing, counsel for Debtor addressed the lack of Debtor having to pay any state or federal taxes on her annual income as being based, after his due diligence investigation and good faith statement of applicable law, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

Cause exists to dismiss this Chapter 13 case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is granted, and this Chapter 13 case is dismissed.

FINAL RULINGS

16. [17-28000-E-13](#) **GEORGE BELTRAN AND** **ORDER TO SHOW CAUSE - FAILURE**
 CLAUDIA CHAVEZ **TO PAY FEES**
 Muoi Chea **1-16-18 [19]**

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 18, 2018. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on January 10, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

17. [14-32002-E-13](#) **KAO SAECHAO AND MYHANH** **MOTION TO DISMISS CASE**
DPC-2 **NGUYEN** **1-19-18 [68]**
 Matthew DeCaminada

Final Ruling: No appearance at the February 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 19, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is denied without prejudice.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Kao Saechao and Myhanh Nguyen (“Debtor”) are \$2,603.74 delinquent in plan payments, which represents multiple months of the \$1,984.79 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on January 26, 2018. Dckts. 75, 78. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 75, 77. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

Final Ruling: No appearance at the February 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 24, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee alleges that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S MOTION TO DISMISS

Debtor filed a Motion to Dismiss this case on February 9, 2018. Dckt. 53.

RULING

Debtor—by filing his own motion to dismiss this case—appears to agree with the Chapter 13 Trustee that this case should be dismissed. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

20. [15-29404-E-13](#) **TAEVONA MONTGOMERY** **MOTION TO DISMISS CASE**
DPC-5 **Peter Macaluso** **1-19-18 [226]**

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on February 6, 2018, Dckt. 230; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Taevona Montgomery (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil

22. [17-27906-E-13](#) PAMELA SPRING
Mohammad Mokarram

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-8-18 [15]**

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 10, 2018. The court computes that 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on January 3, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

23. [17-24407](#)-E-13 PATRICK/MARGUERITE MOTION TO DISMISS CASE
DPC-3 SEEHUETTER 1-24-18 [51]
 Robert Huckaby

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on February 13, 2018, Dckt. 69; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Patrick Seehuetter and Marguerite Seehuetter (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 69, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the February 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 7, 2017. By the court’s calculation, 76 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“The Chapter 13 Trustee”) argues that Lyudmila Pokatillov (“Debtor”) did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on November 21, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

25. [13-31616](#)-E-13 ADAM/SHERRI NEWLAND MOTION TO DISMISS CASE
DPC-6 Peter Macaluso 1-19-18 [[107](#)]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on February 15, 2018, Dckt. 113; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Adam Newland and Sherri Newland (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 113, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

26.

[17-26217](#)-E-13
DPC-2

LATRICE/MICHAEL HATCHER
James Keenan

CONTINUED MOTION TO DISMISS
CASE
12-18-17 [21]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 18, 2017. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) argues that Latrice Hatcher and Michael Hatcher (“Debtor”) did not commence making plan payments and are \$3,000.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

JANUARY 17, 2018 HEARING

At the hearing, Debtor appeared and stated they do not want the case dismissed, they had been communicating with their counsel, and they desired to speak with counsel further. Dckt. 26. The court continued the hearing to 10:00 a.m. on February 21, 2018. Dckt. 27.

RULING

No evidence has been presented that the delinquency has been cured. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

27.	17-26719-E-13 DPC-2	BART SETTER Mark Shmorgon	CONTINUED MOTION TO DISMISS CASE 11-14-17 [15]
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Final Ruling: No appearance at the February 21, 2018 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on February 7, 2018, Dckt. 56; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Bart Setter (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 56 (for the Withdrawal), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

29. [15-29721](#)-E-13 **JOHN TAVERA**
DPC-1 Ashley Amerio

MOTION TO DISMISS CASE
1-19-18 [22]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on February 9, 2018, Dckt. 27; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the reply filed by John Tavera (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 27 (for the Withdrawal), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

30.

[16-27832-E-13](#)
DPC-2

SCARLET BAIN
Robert Fong

MOTION TO DISMISS CASE
1-22-18 [20]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on February 15, 2018, Dckt. 26; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Scarlet Bain (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 26, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

31. [17-26035-E-13](#) **RUSSELL/PATRICIA CARLSEN** **MOTION TO DISMISS CASE**
DPC-1 **Seth Hanson** **1-22-18 [17]**

Final Ruling: No appearance at the February 21, 2018 hearing is required.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

32. [17-26735-E-13](#) **GEORGE ALM** **CONTINUED MOTION TO DISMISS**
DPC-1 **Robert Huckaby** **CASE**
 12-7-17 [30]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on February 5, 2018, Dckt. 52; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by George Alm (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 52 (for the Withdrawal), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

33. [16-23350-E-13](#) **JODY/JOY SILVA** **MOTION TO DISMISS CASE**
DPC-4 **Michael Croddy** **1-19-18 [106]**

Final Ruling: No appearance at the February 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 19, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Jody Silva and Joy Silva (“Debtor”) are \$5,677.00 delinquent in plan payments, which represents multiple months of the \$5,597.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

34.	<u>17-26752-E-13</u>	ROXANNE PRIDE Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 1-16-18 <u>[34]</u>
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Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on January 18, 2018. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$233.00 due on January 9, 2018.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on January 22, 2018 (Dckt. 43), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

35. [15-23156-E-13](#) **GUILLERMO/LURDES MEDINA** **MOTION TO DISMISS CASE**
DPC-5 **Joseph Canning** 1-19-18 [73]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on February 8, 2018, Dckt. 80; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Guillermo Medina and Lurdes Medina (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 80, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

36.

[17-26462-E-13](#)
DPC-2

ABRAHAM RUELAS
David Foyil

MOTION TO DISMISS CASE
1-12-18 [40]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on February 8, 2018, Dckt. 55; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Abraham Ruelas (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 55, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

37. [18-20162-E-13](#) **BRADLEY MARTIN**
Michael Avanesian

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
1-25-18 [11]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 27, 2018. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$310.00 due on January 11, 2018 .

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on January 29, 2018 (Dckt. 13), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

38.

[17-23464-E-13](#)
DPC-4

JOSEPHINE MELONE
Mary Ellen Terranella

MOTION TO DISMISS CASE
1-11-18 [\[126\]](#)

Final Ruling: No appearance at the February 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 11, 2018. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Josephine Melone (“Debtor”) is \$10,450.00 delinquent in plan payments, which represents multiple months of the \$5,225.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on December 12, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

39. [16-23669-E-13](#) VAL/CHANDRA COLA MOTION TO DISMISS CASE
DPC-1 Mohammad Mokarram 1-22-18 [38]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 22, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Val Cola and Chandra Cola (“Debtor”) are \$1,490.00 delinquent in plan payments, which represents multiple months of the \$560.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

40.	<u>17-27274-E-13</u>	SEAN/VIRGINIA ODOM Candace Brooks	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 2-5-18 [34]
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Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 7, 2018. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$73.00 due on January 31, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

41. [17-27477](#)-E-13 LORI TYLER
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-17-18 [34]**

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on January 19, 2018. The court computes that 33 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on January 12, 2018.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on January 22, 2018 (Dckt. 38), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

42. [17-26379-E-13](#) ERIKA DAVIS
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-2-18 [29]**

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 4, 2018. The court computes that 48 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on December 26, 2017.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

43. [17-26379](#)-E-13 **ERIKA DAVIS**
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
1-29-18 [[35](#)]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 31, 2018. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$10.00 due on January 24, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

44. [16-24481](#)-E-13 **MARCO/MONICA ROMO**
DPC-2 Steven Shumway

MOTION TO DISMISS CASE
1-22-18 [[69](#)]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

45. [16-25182-E-13](#) **VERNON DAVIS AND KATHRYN MOTION TO DISMISS CASE**
DPC-1 **DRULINER** **1-22-18 [38]**
 Ashley Amerio

Final Ruling: No appearance at the February 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 22, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Vernon Davis and Kathryn Druliner (“Debtor”) are \$3,780.00 delinquent in plan payments, which represents multiple months of the \$1,890.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

46. [17-27888](#)-E-13 MEEGAN WILLIAMSON **ORDER TO SHOW CAUSE - FAILURE
Steele Lanphier TO PAY FEES
1-5-18 [20]**

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 7, 2018. The court computes that 45 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on January 2, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

47. [16-26593-E-7](#)
DPC-3

JAY KLIPP
Michael Hays

CONTINUED MOTION TO DISMISS
CASE
12-19-17 [57]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on February 2, 2018, Dckt. 73; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Jay Klipp (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 73, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

48. [16-22495-E-13](#) LARRY/MARIANNE HAVENS MOTION TO DISMISS CASE
DPC-1 Harry Roth 1-22-18 [17]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on February 6, 2018, Dckt. 27; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Larry Havens and Marianne Havens (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 27, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

49.

[14-30097](#)-E-13
DPC-5

IRVIN/THERESA WHITE
Thomas Amberg

MOTION TO DISMISS CASE
1-19-18 [[143](#)]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on February 9, 2018, Dckt. 149; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Irvin White and Theresa White (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 149, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

50.

[14-29499](#)-E-7
DPC-1

SUKHMINDAR DHESI
Mohammad Mokarram

MOTION TO DISMISS CASE
1-22-18 [[20](#)]

Final Ruling: No appearance at the February 21, 2018 hearing is required.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**